

NO. 42260-3-II

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STATE OF WASHINGTON

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

DEPUTY

STATE OF WASHINGTON,
Respondent,

v.

JARROD AIRINGTON,
Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR GRAYS HARBOR COUNTY

THE HONORABLE JUDGES DAVID EDWARDS and GORDON GODFREY

BRIEF OF RESPONDENT

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

BY:

Gerald R Fuller

GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

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RESPONDENT'S COUNTERSTATEMENT OF THE CASE

Procedural Background

The defendant was charged by Amended Information with Unlawful Possession of a Firearm in the Second Degree, RCW 9.41.040(2)(a) and Possession of an Unlawful Firearm, RCW 9.41.190. (CP 1-2). Prior to trial the defendant filed a Motion to Suppress alleging failure to comply with the knock and announce requirement of RCW 10.31.040 when the deputies executed a warrant for the defendant's arrest at his residence. The defendant also alleged that the deputies conducted an illegal "search" of the residence following execution of the Bench Warrant for the arrest of the defendant. (CP 21, 22-50). The defendant did not challenge the validity of the warrant for the defendant's arrest. A hearing was held on May 13, 2011. The court denied the Motion to Suppress. Findings of Fact and Conclusions of Law were entered. (CP 3-7).

The matter was tried to a jury on June 1-2, 2011. Items seized from the defendant's residence pursuant to the search warrant issued following the defendant's arrest were admitted at trial. These included the following: A sawed-off shotgun located in the closet of the master bedroom. (Exhibit 23, RP Trial, page 36); a spent shotgun shell located on the night stand in the bedroom. (Exhibit 24, RP Trial page 70); a sack of shotgun shells located in the master bedroom (Exhibit 25, RP Trial page 70); identification in the name of the defendant taken from a wallet located on a dresser in the master bedroom (Exhibit 27, RP Trial page 83-84);

photographs taken during the execution of the search warrant, identifying the locations of the various items that were admitted at trial (Exhibit 7, 10, 11, 12, 13, 15) and a photograph of the defendant holding a firearm found on a bulletin board near the living room (Exhibit 9B, RP Trial pages 82-83). Other items seized pursuant to the search warrant, including a set of scales, digital memory cards from the defendant's wallet, drug paraphernalia, green vegetable matter, and binoculars, were not offered or admitted at the trial.

The jury returned a verdict of guilty to the charge of Unlawful Possession of a Firearm in the Second Degree and not guilty to the charge of Possession of an Unlawful Firearm.

Factual Background

The undisputed facts are set forth in the court's Findings of Fact and Conclusions of Law and Order Re: Motion to Suppress entered on May 23, 2011. (CP 3-7).

Prior to March 20, 2011, Deputy Schrader of the Grays Harbor Sheriff's Department had confirmed outstanding warrants for the arrest of Ricky Tatro, James Torrance, and the defendant. The defendant had a warrant for his arrest issued in Grays Harbor Superior Court cause number 10-1-175-4 on January 10, 2011. (Exhibit 3, hearing of May 13, 2011). Deputy Schrader had received information that Tatro and Torrance may have been staying with the defendant at the defendant's residence. Shortly before the officers went to execute the warrant, Deputy Schrader spoke to

the defendant's landlord and confirmed that the defendant was living at a residence located on the landlord's property. (CP 3-4, Finding of Fact 1).

Sheriff deputies went to the defendant's residence to execute the warrant of arrest on the defendant. Deputy Schrader was aware that the defendant had a violent history and that the defendant had a prior conviction for unlawful possession of a firearm. (CP 3, Findings of Fact 2). As he approached the residence, Deputy Schrader saw a shotgun shell on the ground next to the porch and several knives on the table next to the front door. Schrader could hear movement inside the residence. (CP 4, Findings of Fact 3).

Schrader approached the front door and knocked, announcing himself as a deputy sheriff and announcing that he had a warrant for the defendant's arrest. He called for the defendant to surrender himself. Schrader did this more than once, but never received a response. (CP 4, Findings of Fact 4). The landlord had given him a key, but it did not work to open the door. Deputies obtained a second key, which also did not work. Eventually, deputies had to kick in the door to the residence. (CP 4, Findings of Fact 4).

Deputy Crawford entered with his apprehension dog, announcing their entry. The dog started toward the rear bedroom of the residence. The defendant called out from the rear bedroom and eventually came out into the living room where he was arrested. Two females also came out of the same bedroom. (CP 5, Findings of Fact 5, 6).

As the defendant was being arrested, Deputy Ramirez checked the front bedroom for any other individuals who might be present and a threat to the officers. Sergeant Johansson checked the rear bedroom. (CP 5, Findings of Fact 7). Johansson observed a sawed-off shotgun leaning against the wall in the bedroom closet. (CP 5, Findings of Fact 7, RP 41-42 Suppression hearing).

Following the arrest of the defendant, the residence was vacated and secured. The house was searched pursuant to search warrant later that afternoon. Officers seized the shotgun and a number of other items pursuant to the warrant (Exhibit 1, 2 Hearing of May 13, 2011). A copy of the search warrant, affidavit for search warrant, and search warrant return are attached hereto and incorporated herein by this reference as Appendix 1.

RESPONSE TO ASSIGNMENTS OF ERROR

The Facts Found by the Trial Court are Supported by Substantial Evidence. The Deputies Properly Executed the Warrant for the Defendant's Arrest. (Response to Assignments of Error 1, 15-21).

The defendant has assigned error to Findings of Fact 1, 2, 4, and 9. These findings are all supported by substantial evidence in the record. Contrary to the defendant's assertion, there is no dispute concerning what happened. The officers testified at the hearing on the motion to suppress and were subject to cross examination. No other evidence was presented. The findings entered by the trial court accurately reflect the testimony at the hearing. Despite assigning error to the findings of the court, the

defendant points to no evidence in the record to contradict the factual findings made by the trial court.

The deputies had a bench warrant issued by the Superior Court for the defendant's arrest in connection with the defendant's conviction of Assault in the Fourth Degree - Domestic Violence. This warrant gave the officers authority to forcibly enter the defendant's residence and place him under arrest. State v. Hatchie. 161 Wn.2d 390, 398-402, 166 P.3d 698 (2007). The law draws no distinction between the execution of a felony warrant and a misdemeanor warrant on the facts of this case. Hatchie, supra. The deputies spoke to the landlord and confirmed the defendant's residence. They heard persons inside the residence when they knocked and announced immediately prior to executing the warrant of arrest. (CP 3-4, Findings of Fact 1).

The manner in which the deputies executed the search warrant complied with RCW 10.31.040 which provides as follows:

To make an arrest in criminal actions, the officer may break open any outer or inner door, or windows of a dwelling, or other building or any other inclosures, if, after notice of his or her office and purpose, he or she be refused admittance.

The evidence regarding the officers compliance with the statute is clear and undisputed. The officers announced multiple times that they were present, had a warrant, and that the defendant needed to come to the door. (CP 4, Finding of Fact 4, RP Motion to Suppress 8-9).

The court found as a matter of fact that the protective sweep of the residence was done simultaneously with the defendant's arrest to insure the personal safety of the officers. (CP 6, Findings of Fact 9). The court found that the deputies had information that others may be in the residence and, therefore, the officers had a heightened concern for their safety. (CP 6, Findings of Fact 9, RP Motion to Suppress page 17, 38).

The arresting officers are entitled to take reasonable steps to ensure their safety while making an arrest. Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed. 2d 296 (1990). The officers are entitled to "... assure themselves that the house in which the suspect is being, or has just been, arrested, is not harboring other persons who are dangerous and could unexpectedly launch an attack." State v. Boyer, 124 Wn.App. 593, 600-601, 102 P.3d 833 (2004) citing Maryland v. Buie, 494 U.S. at page 333.

The principles involved have been set forth in Boyer, 124 Wn.App. at page 601:

To justify a protective search beyond immediately adjoining areas, the officers must be able to articulate facts which, if taken together with rational inferences from these facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.

In the first instance, unlike the officers in Boyer who went into a separate storage area outside the apartment where their search warrant was being executed, the deputies herein did not go beyond the "immediate adjoining area." Sergeant Johansson went into the room that the defendant

had just left immediately prior to his arrest. The shotgun was found in that room. In any event, the officers had information that other individuals, known to them to be dangerous, might also be in the residence. These facts, along with the fact that others were in the residence, who the officers did not expect to be there, raised a reasonable and rational inference that still more individuals might be in the residence. The sweep of the premises was cursory and took no longer than necessary to assure the officers that others were not in the residence. It is entirely reasonable for a deputy to look into a closet in the room from which the defendant has just come, to ensure that another person is not hiding therein.

This was not a pretext to search the premises. The trial court so found. (CP 6, Motion to Suppress Findings of Fact 9). Deputies had a bench warrant to be served. They were validly inside the residence. The court approved a search warrant based upon what the deputies saw in plain view when they were executing the bench warrant. State v. Busig, 119 Wn.App. 381, 389, 81 P.3d 143 (2003).

Admittedly, the officers were looking for a number of different individuals, including the defendant. As it turns out, they had information that the individuals they were looking for may be at the defendant's residence. They also had a warrant for the defendant's arrest. Would anyone suggest that they cannot execute that warrant simply because they have reason to believe that others may be present at the defendant's residence?

An officer's subjective motivation to locate and arrest others who may be present does not prohibit the execution of a valid warrant of arrest. State v. O'Neil, 148 Wn.2d 564, 577, 62 P.3d 489 (2003). The officers in this case were not involved in a speculative criminal investigation. Taking into account the totality of the circumstances, the warrants for the arrest of Kinnaman and Tatro and the deputies' conduct at the scene of the arrest, the trial court properly held that the execution of the warrant of arrest was not a pretense. State v. Weber, 159 Wn.App. 779, 788, 247 P.3d 782 (2011).

Unlike State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999), this was not an investigatory stop used as a pretense for a criminal investigation. This was the execution of a bench warrant for the arrest of the defendant. Since its inception, Ladson has been limited to its facts. The ruling in Ladson simply does not apply to the case at hand. State v. Bailey, 154 Wn.App. 295, 303, 224 P.3d 852 (2010); State v. Mitchell, 145 Wn.App. 1, 186 P.3d 1071 (2008).

The Search Warrant Was Valid (Response to Assignments of Error 2-13).

A copy of the search warrant affidavit and search warrant is attached as Appendix 1. The warrant affidavit set forth ample probable cause to search the premises for controlled substances, drug paraphernalia, and firearms.

First of all, the declaration set forth the background and training of Deputy Schrader. He and his canine partner had many hours of training in

drug investigations and drug identification. Deputy Schrader observed a glass smoking device on the living room table, as well as a mirror and razor blade. These were immediately adjacent to where the defendant was arrested. Deputy Schrader immediately recognized these items, from his training and experience, as drug paraphernalia. Hypodermic needles were located in the bathroom closet during the protective sweep of the premises. These items were not seized at the time of the arrest. Clearly these observations establish probable cause to search the residence for drug paraphernalia, as listed on the face of the search warrant. More importantly, as mentioned later, whatever drugs and drug paraphernalia may have been seized, were never offered or admitted at trial.

The search warrant authorized the seizure of firearms. The search warrant declaration recited that Sergeant Johansson, during his security sweep of the residence located a sawed-off shotgun in the master bedroom closet. The defendant was arrested when he came out of the master bedroom. Deputy Schrader recited in the search warrant affidavit that he was aware that the defendant was a convicted felon and had been ordered not to possess firearms. He confirmed this through a criminal history check.

There was probable cause to seize the shotgun located in the bedroom closet. The deputies were entitled to seize other items in plain view from the bedroom including the spent shotgun shell located on the

night stand and the sack of shotgun shells located on the dresser in the master bedroom.

The search warrant validly authorizes the search for drug paraphernalia. The defendant concedes this point. (Brief of Appellant, page 11). This would authorize the search of the bedroom and the search into areas where such drug paraphernalia might be found. Obviously, the officers would be entitled to look on top of the dresser in the bedroom. Having done that, and seen the shotgun shells, it would be immediately apparent that the defendant's possession of shotgun shells would be relevant evidence concerning his possession of the shotgun found in the bedroom.

Similarly, the search of the wallet for drugs or drug paraphernalia, which yielded the defendant's identification was valid. The identification of the defendant, found in the bedroom where the shotgun was located, is clearly relevant evidence to connect the defendant to the room and the possession of the shotgun and shotgun shells. The officers were in a place where they were entitled to be and immediately recognized the items as evidence of the crime. See State v. Fowler, 76 Wn.App. 168, 883 P.2d 338 (1994).

This court should also understand that no challenge was made at the trial court level to either the validity of the search warrant or to the seizure of these items.

Item four of the search warrant authorizes seizure of the following items:

Monies; bank records and bank statements; video tapes and still photographs; personal computers together with peripheral devices attached thereto and records contained on electronic storage media (floppy discs, tape drivers, compact discs, etc.; letters and crib sheets and weapons.

To the extent that this language authorizes the seizure of photos it is supported by probable cause. Deputy Schrader observed a photograph of the defendant holding two pistols that was hanging on a wall on the inside of the living area of the residence. The photograph was dated January 2011. The defendant was arrested in the living room. The photo was observed in plain view. The photo was admitted at trial. (Ex. 9B, RP Trial p. 83). Once again, the issue of the seizure of these photographs based upon the observations of the photographs at the time of arrest was not raised at the trial court.

Admittedly, the authorization to search for the balance of the items listed in item four of the search warrant was not supported by probable cause. No such items were found or seized. The warrant clearly described two other types of items for which probable cause existed, firearms and drug paraphernalia. The fact that the search warrant may have authorized the seizure of items for which probable cause did not exist, does not invalidate the entire search warrant. A search warrant is severable when it clearly describes other items for which probable cause exists. State v.

Cockrell, 102 Wn.2d 561, 570, 689 P.2d 32 (1984); Aday v. Superior Court, 55 Cal.2d 789, 362 P.2d 47 13 Cal.Rptr. 415 (1961).

The admittedly invalid portion of the search warrant can be severed from the balance of the search warrant. Under the severability doctrine “infirmary of part of a warrant requires suppression of evidence seized pursuant to that part of the warrant but does not require suppression of items seized pursuant to valid parts of the warrant.” State v. Perrone, 119 Wn.2d 538, 556, 834 P.2d 611 (1992). When a search warrant describes both items that are supported by probable cause, and items that are not supported by probable cause, the doctrine of severability applies so long as a “meaningful separation” can be made on some “logical and reasonable basis.” Perrone 119 Wn.2d at page 560.

The case at hand is nearly identical to the warrant reviewed in State v. Maddox, 116 Wn.App. 796, 806, 67 P.3d 1135 (2003). Maddox presented a situation in which some items listed were supported by probable cause and others were not. The warrant in the case at hand meets the requirement for severability as set forth in Maddox 116 Wn.App. at page 807-809.

First of all, as indicated previously, the warrant validly authorized entry onto the premises. Secondly, the warrant clearly described at least three items for which probable cause existed, the drugs, the drug paraphernalia, and the firearm. Thirdly, those items described for which there is probable cause are significant when compared to the warrant as a

whole. The search warrant affidavit addresses itself exclusively to the presence of the firearm and drug paraphernalia seen in the residence and the photo of the defendant holding a firearm that was observed on the living room wall.

This is not a general exploratory search warrant. The items seized were found while executing the valid portion of the search warrant. Indeed, no items were seized pursuant to the admittedly invalid portion of the warrant. There is no claim that the officers conducted a general search and there is no allegation that the officers “flagrantly disregarded” the scope of the warrant. The photograph was found in the living room near where the arrest occurred. The balance of the items seized and admitted at trial were seized from the defendant’s bedroom immediately adjacent to where the defendant was arrested.

The defendant asserts that the search warrant is invalid in part because it does not affirmatively state that the officers complied with the knock and announce rule of RCW 10.31.040. The defendant cites no authority for the proposition that the search warrant affidavit must affirmatively reflect compliance with procedural rules such as knock and announce or advisement of Miranda. To grant the defendant’s assertion would lead to a truly odd result.

The search warrant declaration does not address the manner in which the bench warrant was executed. This does not mean that it was not executed in compliance with the statute. Indeed, the court held a hearing

and the undisputed testimony at the hearing was that the officers complied with RCW 10.31.040. To grant the defendant's motion on this ground would be to put form over substance.

Finally, the defendant asserts that the search warrant is invalid because the information obtained was pursuant to the execution of an invalid warrant of arrest. As indicated, below, the validity of the warrant for the arrest of the defendant was not adjudicated at the trial court level. There is nothing to support the defendant's assertion that the warrant of arrest was invalid other than assertions made by the defendant that were never developed on the record. What the record does disclose is that the officers validly executed a warrant for the defendant's arrest. Their observations were made while they were validly in the premises arresting the defendant and taking steps to assure that no one else was present. Once again, the defendant would have us exalt form over substance and simply assume the invalidity of the warrant of arrest based on an incomplete record.

For the reasons set forth this assignment of error must be denied.

The Defendant May Not Now Challenge the Validity of the Arrest Warrant.

For the first time on appeal, the defendant is trying to collaterally attack the bench warrant issued by the Superior Court. This issue was never raised at trial court level. This issue is raised solely on the defendant's perception of what must have happened based only upon a review of court documents admitted at the time of the motion to suppress.

(Exhibit 3, Suppression Hearing). Such a challenge may not be raised for the first time on appeal.

Error predicated upon evidence allegedly obtained by illegal search and seizure cannot be raised for the first time on appeal. State v. Silvers, 70 Wn.2d 430, 432, 423 P.2d 539, *Cert. denied*, 389 U.S. 871 (1967). The Constitution only requires exclusion of illegally obtained evidence upon a timely objection. State v. Gunkel, 188 Wash.528, 534-35, 63 P.2d 376 (1936).

Absent a timely objection, the admission of evidence is not error, even if that evidence was illegally obtained. There is no Constitution right to have evidence excluded without a proper objection. If there is no timely or proper motion to suppress the alleged error is not “manifest.” The admission of evidence cannot be “manifest error affecting a Constitutional right” unless record has been developed at the trial level. See RAP 2.5(a); State v. Riley, 121 Wn.2d 22, 31, 846 P.2d 1365 (1993).

Thus, for example, a defendant who fails to object to the seizure of evidence seized from a motor vehicle cannot raise the matter for the first time on appeal. State v. Nyegaard, 154 Wn.App. 641, 646, 226 P.3d 783 (2010). An attack on the sufficiency of probable cause to support an arrest may not be raised for the first time on appeal. State v. Trujillo, 153 Wn.App. 454, 222 P.3d 129 (2009).

The reason for this rule is apparent. The facts necessary for complete adjudication of this issue are not in the record. There is more to

the record in cause 10-1-175-4 than the order authorizing issuance of the bench warrant and the bench warrant itself. What is in the record in this matter is the judgment and sentence in cause 10-1-175-4 that directs the defendant is to appear every two weeks following his release from confinement. Orders were entered continuing the defendant's appearance on several occasions. When the defendant failed to appear pursuant to the order of continuance, a bench warrant was issued. A review of the documents admitted at the suppression hearing make it clear that the reason for the issuance of a bench warrant was for the defendant's failure to appear for the review ordered by the court and that the notation "failure to appear for DNA sample" was put in the order for bench warrant in error. (Exhibit 3 Motion to Suppress).

In any event the record before the court is totally insufficient to develop all the facts necessary. This court cannot speculate. It is unfair to the state and to the defendant to reach the wrong conclusion concerning the validity of the warrant based on incomplete facts. State v. Riley, supra.

The Defendant Received Effective Assistance of Counsel (Response to Assignment of Error 22, 23).

The standard for determining effective assistance of counsel is well established. First of all, the defendant must show that defense counsel's conduct was deficient, meaning that it fell below an objective standard of reasonableness. If this can be shown, then the defendant must show

prejudice. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).

As regards the claim that the search warrant declaration was overbroad, the defendant cannot show the defense counsel's conduct was deficient. No one disputes that the search warrant affidavit stated probable cause to seize drugs, drug paraphernalia and firearms. The fact that other items may have been named in the search warrant for which there was no probable cause, does not prevent severance of those portions of the search warrant which are not supported by probable cause. Counsel for the defendant undoubtedly was aware of the case law to that effect. State v. Cockrell, supra, 102 Wn.2d at page 570.

Indeed, the only evidence from the search warrant that was admitted at trial was the shotgun, ammunition seen in plain view in the room where the shotgun was located and the defendant's identification, which was found in his wallet in the same room. From the defendant's point of view, there was simply no point in challenging the search warrant as over broad since it could be severed, and, in any event, the state did not offer or try to admit any evidence for which there was not probable cause to justify the seizure of the evidence in the first instance.

As regards the failure to challenge the warrant of arrest, as indicated previously, the defendant is speculating on facts that are not in the record. What record there is supports the validity of the warrant. Having failed to develop this record, the defendant cannot now speculate

concerning the validity of the warrant or that failure to raise this claim prejudices the defendant.

CONCLUSION

For the reasons set forth, the defendant's conviction must be affirmed.

DATED this 23 day of February, 2012.

Respectfully Submitted,

By: Gerald R. Fuller
GERALD R. FULLER
Chief Criminal Deputy
WSBA #5143

GRF/lh

APPENDIX

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MAR 21 2011
DISTRICT COURT
GRAYS HARBOR COUNTY

2011

Certificate of Clerk of the District Court
of Washington in and for Grays Harbor County.
The above is a true and correct copy of the
original instrument which is on file or of
record in this Court. Done this 23rd day of
February, 2012.

STEPHEN E. BROWN, JUDGE

By M. Shelta

CONTROLLED SUBSTANCES NO. _____

DISTRICT COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON)

GRAYS HARBOR COUNTY)

ss: AFFIDAVIT FOR SEARCH WARRANT

COMES NOW KEVIN SCHRADER, who being first duly sworn upon oath, complains, deposes,
and says:

That he has probable cause to believe that, in violation of the laws of the State of Washington,
controlled substances are being used, manufactured, sold, administered, delivered, cultivated,
produced, possessed, or otherwise disposed.

That said controlled substances are under the control of or in the possession of some person or
persons and are concealed in or on certain premises, vehicles, or persons within Grays Harbor County,
Washington, described as follows:

RESIDENCE:

4593 Wishkah Rd. The residence is light brown in color with dark brown trim. The residence is
assessable off the driveway of 55 W. Wishkah Rd and sits on the southwest side of the property.

BACKGROUND EXPERIENCE

My name is Kevin Schrader. I am a Deputy Sheriff with the Grays Harbor County
Sheriff's Office, Montesano, Washington. I have been employed with the Grays Harbor County
Sheriff's Office since September 2000. While assigned to Patrol, I've made several self-initiated

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DISTRICT COURT
GRAYS HARBOR COUNTY

arrests and searches involving Violations of the Uniform Controlled Substances Act (VUCSA). These VUCSA searches resulted in the arrests of and the recovery of various types and quantities of narcotics.

I have also graduated from the 720-hour Police Academy for full time law enforcement officers through the Washington State Criminal Justice Training Commission. During this training, I received additional training in narcotics investigation and recognition.

I have participated in the execution of search warrants where narcotics have been located and persons arrested for VUCSA, to include methamphetamine, methamphetamine labs, heroin, cocaine, marijuana, and other controlled substances.

I have received training in the identification of narcotics and, through my police experience; I can readily identify the narcotics being purchased and sold by individuals involved in narcotics trafficking.

I'm currently assigned as a Narcotic K-9 Officer with the Grays Harbor County Sheriff's Office and have been since September of 2007. I'm currently assigned K-9 "Trick". K-9 Trick and I attended and successfully completed the 240 hour Washington State Department of Corrections K-9 training program at McNeil Island Corrections Center. This training has been recognized by both the Criminal Justice Training Center and the Washington State Police K-9 association, and satisfies the requirements set forth in the Washington Administration Code WAC: 139.05.915. Trick and I were certified as a K-9 detection team in November of 2007 by both the Washington State Criminal Justice Training Center and the Washington State Police Canine Association (WSPCA). Trick has been trained within these standards to alert on the presence of marijuana, methamphetamine, cocaine, and heroin.

Since being certified as a team Trick and I have located over 200 finds and have conducted over 500 searches.

Since Trick I became certified we have assisted in several search warrants that have revealed illegal narcotics to include marijuana, methamphetamine, cocaine, and heroin.

During my 10 years as being a Deputy Sheriff for the Grays Harbor County Sheriff's Office I have completed several investigations and served several warrants that has led to several arrests and the recovery of multiple stolen articles and evidence.

NARRATIVE

On 3-20-11 I received information that Ricky L. Tatro DOB: 6-13-81 was possibly at Jarrod Arrington's residence on the Wishkah Rd. Tatro had an outstanding felony warrant for his arrest out of the Grays Harbor County Sheriff's Office for Possession of a Stolen Vehicle and was a suspect in a vehicle theft that occurred on 3-19-11 in Aberdeen. At 1859 hours Anastasia Cavan reported to the Aberdeen Police Department that she lent her vehicle to Tatro to go to the store the night before and he not returned the vehicle. The vehicle which was later entered as a stolen vehicle. See AP11-4793.

I was aware that Airington's residence was at 4593 Wishkah Rd in Aberdeen. I checked Airington for outstanding warrants and was advised that he had a misdemeanor warrant for his arrest out of the Grays Harbor County Sheriff's Office for failing to appear for a DNA test on an Assault 4 charge. This warrant as well as Tatro's warrant were later confirmed.

Because Tatro and Airington both have a violent criminal past and are known to carry firearms I advised Sgt. Johansson, Deputy Crawford, Deputy Ramirez, and Deputy Wallace of the incident and requested that they respond towards my location to assist in going to Airington's residence and arresting both him and Tatro on their warrants.

I later met up with the other Deputies in the Aberdeen area and we responded to Airington's residence. Prior to making contact with Airington's residence I contacted his landlord Ivars V. Matisons DOB 1-1-47 at 55 W. Wishkah Rd and obtained a key from him for the residence. Matisons confirmed that he is renting the residence at 4593 Wishkah Rd to Airington and has been since 2-10-11. Matisons gave me a key to the residence at my request. Matisons driveway shares a driveway with Airington's residence. I asked Matison's if he had seen a black Honda station wagon driving up towards Airington's residence and he advised me that he did earlier in the day. He also advised me that there has been nonstop traffic going to and from the residence all day long.

We then responded up the driveway to Airington's residence and made contact with the residence. As we approached you could hear movement from inside of the residence. There was a 12 gauge shotgun sell near the front porch of the residence. I noticed that there were at least 4 pairs of

men's shoes sitting at the front door leading me to believe that there were multiple persons inside of the residence. I also noticed several fixed blade knives and a portable scanner sitting on a table next to the front door. I knocked on the front door and announced our presence but nobody would answer the door. After announcing several other times I attempted to open the door with the key I was provided by the landlord. The key would not unlock the deadbolt. I continued to announce our presence while Deputy Wallace responded back down the driveway to the landlord's residence and obtained a second key. I tried this key in the deadbolt and was again unsuccessful. Deputy Ramirez then forced open the door and Deputy Crawford and his K-9 Gizmo entered the residence. We then heard someone yelling from the back master bedroom of the residence for us to secure the dog and they would come out. Gizmo was secured and three people came out of the back residence. One of the subjects was Airington and two of the subjects were unidentified females. These three people were ordered to lay on the ground with their hands visible. I secured Airington in handcuffs and patted him down for weapons. I kept an eye on these subjects while Deputy Crawford, Deputy Ramirez, and Deputy Wallace searched the rest of the residence for Tatro and other possible armed subjects. I was later advised by the other officers that the residence was secure. I then transported Airington out of the residence and placed him into the rear of my patrol vehicle.

During the sweep of the residence I noticed a glass smoking device sitting on a living room shelf that I know from my training and experience is commonly used to smoke marijuana. The device contained a burnt residue. I also located several used hypodermic needles in the bathroom closet while looking for other subjects in the residence, and a razor blade on a mirror that was sitting on the living room table. I know from my training and experience that items of this nature are commonly used to prepare illegal narcotics for consumption. I also noticed photographs of Airington holding what appeared to be two pistols hanging on a wall inside of the living area of the residence. These photographs were dated 1/2011

I returned to the residence where the other officers were at and Sgt. Johansson advised me that during his security sweep of the residence he had located a loaded sawed off shotgun in the master bedroom closet. It should be noted that this is the location that the three subjects came from prior to their arrest. Sgt. Johansson continued to question the females about their knowledge about Tatro, the

illegal shotgun, and the stolen vehicle Tatro was alleged to have.

One of the females was later arrested on outstanding warrants and the other was given a courtesy transport into Aberdeen. The residence was secured and Deputy Ramirez is on scene making sure the residence remains secure.

I am aware that Airington is a convicted felon and has been ordered not to possess firearms. A criminal history check later confirmed that Airington is prohibited from possessing firearms.

Based on the information presented in this Affidavit, I respectfully request a Search Warrant allowing permission to search such premises, persons, and/or vehicles as described above and seize controlled substances, as there found, together with the vessels in which they are contained.

I request permission to seize any and all implements or articles used or kept for the illegal manufacture, sale, administration, delivery, distribution, cultivation, production, possession, or otherwise disposing of such controlled substances.

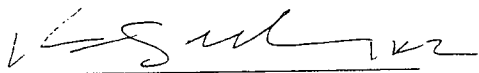
I request permission to search for evidence of a crime, the fruits of crime, things otherwise criminally possessed, or other things by means of which a crime has been committed or reasonably appears about to be committed, particularly described as follows:

- a. Narcotics, and the vessels used to contain them.
- b. Drug paraphernalia used to ingest, package or weigh illegal narcotics.
- c. I request permission to seize any and all firearms and weapons found.
- d. I request permission to seize any or all indicia that identifies the person or persons having domain or control over the residence

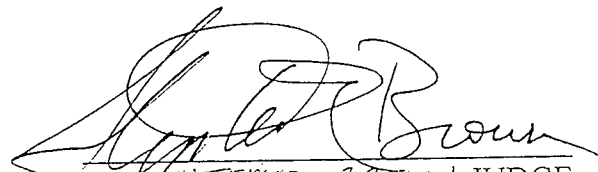
A copy of this Warrant shall be given to the person from whom the property is taken. If no such person is present, a copy of the Search Warrant and a receipt for said property will be posted at the place where the property is found. The Warrant shall be executed within 10 days of this date. A Return of Service will be filed with the Clerk of the Court within three days from execution of said Warrant.

SUBSCRIBED AND SWORN ON

DATED: March 20, 2011.



AFFIANT



STEPHEN BROWN, JUDGE

Issuance of Warrant Approved:

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

By:
Deputy Prosecuting Attorney

Certificate of Clerk of the District Court
of Washington in and for Grays Harbor County.
The above is a true and correct copy of the
original instrument which is on file or of
record in this Court. Done this 23rd day of

February, 2012.

STEPHEN E. BROWN, JUDGE

By M. Selt

CONTROLLED SUBSTANCES NO _____

FILED

MAR 21 2011

DISTRICT COURT
GRAYS HARBOR COUNTY

DISTRICT COURT OF WASHINGTON FOR GRAYS HARBOR COUNTY

STATE OF WASHINGTON)

GRAYS HARBOR COUNTY)

) ss:

SEARCH WARRANT

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON

There is probable cause to believe that, in violation of the laws of the State of Washington, controlled substances are being used, manufactured, sold, administered, delivered, cultivated, produced, possessed, or otherwise disposed of.

There is further probable cause to believe said controlled substances and/or the materials used to manufacture them are concealed in or on a certain vehicle described as follows:

RESIDENCE:

4593 Wishkah Rd. The residence is light brown in color with dark brown trim. The residence is assessable off the driveway of 55 W. Wishkah Rd and sits on the southwest side of the property.

YOU ARE COMMANDED TO:

1. Search such container and or property as specifically described above.
2. Seize the following property, but not limited to:

Evidence of a crime, the fruits of crime, or things otherwise criminally possessed, or other things by means of which a crime has been committed or reasonably appears about to be committed, particularly described as follows:

Narcotics, and drug paraphernalia used to ingest, package or weigh illegal narcotics.

3. Seize any and all firearms and weapons.

4. Search such container for indicia of domain or control over the container, and the following:

To include, but not limited to moneys; bank records and bank statements; video tapes and still photographs; personal computers together with peripheral devices attached thereto and records contained on electronic storage media (floppy disks, tape drives, compact disks, etc.); letters and crib sheets; and weapons.

5. Provide a copy of this warrant to the person from whom or from whose premises the property is taken, together with a receipt for such property. If no such person is present, a copy of this warrant and receipt may be posted at the place where the property is found.

6. Execute this Warrant within 10 days of this date. Safely keep the property seized and make a return of this Warrant to the undersigned judge within five days following execution of the warrant, with particular statement of all property seized.

A Return of Service shall be filed with the Clerk of the Court together with a copy of this Warrant and a copy of the receipt for property taken within three days from date of service.

DATED: March 20, 2011.


JUDGE

RETURN OF OFFICER, INVENTORY
AND RECEIPT FOR PROPERTY

Certificate of Clerk of the District Court
of Washington in and for Grays Harbor County.
Above is a true and correct copy of the
original instrument which is on file or of
record in this Court. Done this 23rd day of

STATE OF WASHINGTON)
) ss
GRAYS HARBOR COUNTY)

February, 2012.
STEPHEN E. BROWN, JUDGE

By M. Shetz

THIS IS TO CERTIFY that I received the within Search Warrant on the 20th day of
MARCH, 2011, pursuant to the command contained therein, I made due and
diligent search of the property and premises (vehicle) (person) described therein and found the following:

SEE ATTACHED MASTER EVIDENCE RECORD

Names of persons found in possession of property:

JAROD A. RINGTON

Names of persons served with true and complete copy of Search Warrant:

LEFT @ HOUSE

Description of door or conspicuous place where copy of Search Warrant posted:

KITCHEN TABLE

Place where property kept:

GHCSO

DATED THIS 20 day of MARCH, 2011.

Witnesses:

[Signature]

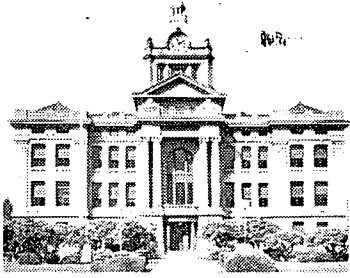
The Peace Officer taking property under this warrant shall give to the person from whom or from
whose premises the property is taken a copy of this warrant in its completed form. If no such person
is present, the officer may post the completed copy. The Return of Officer, Inventory and Receipt for
Property shall be made in the presence of the person from whose possession or premises property
is taken, or in the presence of at least one person other than the officer.

RETURN OF OFFICER, INVENTORY & RECEIPT

Grays Harbor County Sheriff's Department MASTER EVIDENCE RECORD TO BE COMPLETED BY INVESTIGATING DEPUTY		Case # <u>11-3542</u>		Page <u>1</u> of <u>1</u>
OFFENSE <u>FELON POSS FIREARM (VUCSA)</u>		Offense Date <u>3-20-11</u>	Seizure Date <u>3-20-11</u>	Seizure Time <u>1630</u>
<input checked="" type="checkbox"/> EVIDENCE <input type="checkbox"/> FOUND PROPERTY <input type="checkbox"/> SAFEKEEPING		Legal Owner of Property Described		
Check One: <input checked="" type="checkbox"/> Location of Incident/Offense <input checked="" type="checkbox"/> Location of Seizure Only		NAME <u>JARROD AIRINGTON</u>		
Describe Address or Location:		ADDRESS		
<u>4593 WISHKAM RD</u>		PHONE (H) _____ (W) _____		
Victim <u>ST OF WA</u>		Property Received From _____ Same <input checked="" type="checkbox"/>		
Suspect		NAME		
NAME <u>JARROD AIRINGTON</u>		ADDRESS		
LAB REQUEST <u>TEST # 10</u>		PHONE (H) _____ (W) _____		
		SIGNATURE <u>X</u>		

Item #	Qty	DESCRIPTION: USE A SEPARATE ITEM NUMBER FOR EACH ITEM. DO NOT LIST MORE THAN ONE ITEM PER LINE. EACH ITEM MUST BE NUMBERED AND TAGGED. DESCRIBE EACH ITEM IN DETAIL INCLUDING BUT NOT LIMITED TO: BRAND NAME, MOD., SER.#, SIZE, COLOR.
1	1	JC HIGGINS MODEL 583.11 16 GAUGE SAWED OFF
✓	✓	SHOTGUN (SERIAL NUMBER) REMOVED (BEDROOM #1)
2	1	SET OF TRIPLE BEAM SCALES (KITCHEN)
3	5	PHOTOS (LIVING ROOM)
4	1	BIK RADIO SHACK SCANNER (OUTSIDE PORCH)
5	2	DIGITAL MEMORY CARDS (KODAK 512MB) (PNY OPTIMA 8G)
✓	✓	FOUND IN ARREST AIRINGTON'S WALLET
6	3	IDENTIFICATIONS OF AIRINGTON FOUND IN WALLET
✓	✓	IN BEDROOM #1
7	54	16 GAUGE SHOTGUN SHELLS FOUND IN BEDROOM #1
8	1	SPENT 16 GAUGE SHOTGUN SHELL (BEDROOM #1)
9	1	BAG OF MISC DRUG PARAPHERNALIA
10	1	BAG OF GVM (BEDROOM #1)
11	1	BIK ZEISS 8x40 BINOCULARS SERIAL# 2532195

CHAIN OF CUSTODY (Signature, Personnel Number, Date)		Transfer Locker
PRIMARY DEPUTY <u>1-Sub 1K2</u>	<u>3-20-11</u>	Number
SECONDARY DEPUTY (Required when money seized)		Date
EVIDENCE CUSTODIAN		Time
EVIDENCE LOCATION		



H. STEWARD MENEFEE
Grays Harbor County Prosecuting Attorney

102 W. Broadway, Room 102
Montesano, Washington 98563
360-249-3951
SCAN 234-5231
FAX 360-249-6064

CHIEF CRIMINAL DEPUTY
Gerald R. Fuller

OFFICE ADMINISTRATOR
Randi Toyra

SENIOR DEPUTIES
Jennifer L. Wieland
Rebecca L. Bernard
James G. Baker
William A. Leraas
Kraig C. Newman
Katherine L. Svoboda
Gordon Wright

DEPUTIES
Erin C. Jany
Barbara J. Penttila
Jason F. Walker

February 23, 2012

Mr. David Ponzoha, Clerk
Court of Appeals
Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RE: *State v. Jarrod Airington*
Court of Appeals No. 42260-3-II

RECEIVED
FEB 24 2012
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Dear Mr. Ponzoha:

Please find enclosed an original and one copy of the Brief of Respondent in the above-entitled matter. By cover of this letter, a copy has also been sent to Jodi R. Backlund and Manek R. Mistry.

Very truly yours,

H. STEWARD MENEFEE
Prosecuting Attorney
for Grays Harbor County

By: *Gerald R. Fuller*
GERALD R. FULLER
Chief Criminal Deputy

GRF/lh

Enclosure

cc: Jodi R. Backlund and Manek R. Mistry

COURT OF APPEALS
DIVISION II

12 FEB 24 PM 12:19

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

No.: 42260-3-II

v.

DECLARATION OF MAILING

JARROD AIRINGTON,

Appellant.

DECLARATION

I, *hallett lemons* hereby declare as follows:

On the 23rd day of February, 2012, I mailed a copy of the Brief of Respondent to Jodi R. Backlund and Manek R. Mistry, Backlund & Mistry, Attorneys for Appellant, P. O. Box 6490, Olympia, WA 98507, by depositing the same in the United States Mail, postage prepaid.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 23rd day of February, 2012, at Montesano, Washington.

hallett lemons